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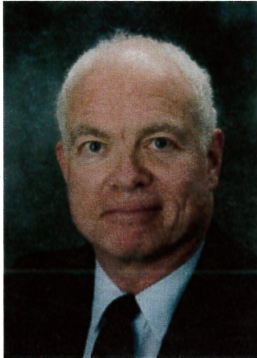
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MOTIONS

VOL. LIII, No. 1 University of San Diego School of Law Verba Volent Scripta Manent November 2016

SAGE ADVICE

Joe Stewart has a Conversation
with Professor Mark Lee



Professor Lee teaches and writes in the areas of business organizations, antitrust, securities regulation, law & economics and criminal law. He has taught at several universities both domestically and abroad, and is at USD as a J. Lawrence Irving Distinguished Senior Teaching Fellow and Professor-in-Residence.

Q: Where did you go to law school?

A: The University of Texas at Austin, class of 1974.

Q: You've taught at several law schools, what brought you to San Diego?

A: I have been a visiting professor at USD since 1990. I was lucky to teach more than my share of terrific students during my eleven summers here before becoming a Professor-in-Residence. Many incisive and witty members of the faculty extended a warm welcome, as did members of the staff. When the mind-boggling generosity of a former student made it possible to teach here full-time, we jumped at the chance.

Q: You've also taught abroad in Italy, Germany, Belgium, and England. What do you perceive as the benefit of traveling abroad for education?

A: Studying law abroad can provide hard-to-come-by insight into U.S. law. But more importantly it can give you more insight into life in the United States than any other experience. It can illuminate surface differences and deep commonalities among people from different nations. It can even teach useful lessons about English. . . .

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IMAGINARY WAR

A Response to Policing the Police

By USD Black Law Students Association

USD's Black Law Student Association believes it necessary to address the assertions made in Policing the Police that we contend are both blatantly false and dangerous, while providing a broader context that will, hopefully, help shed light on this important issue.

An Imaginary War:

Policing the Police begins by alleging the existence of a "war on cops." While the murder of any police officer is tragic and wrong, recent police killings in Dallas and Baton Rouge provide only anecdotal evidence supporting the existence of a war on police. The average number of police officers killed in ambush style attacks is at historic lows⁽¹⁾, and the rate of police officers murdered while on duty has substantially declined decade after decade.⁽²⁾ In fact, FBI data indicates that, in 2015, 41 officers were killed in felonious incidents⁽³⁾, less than the 45 officers who died from accidents like car accidents.⁽⁴⁾ Contrastingly, that same year, police fatally shot over 900 civilians across the country, as identified by the Washington Post.⁽⁵⁾ If there is a war, American civilians are losing.

Black Lives Matter:

Next, the article lays the blame for this "coordinated war on cops" squarely on the activist organization Black Lives Matter (BLM). Blaming the rhetoric of an activist group for the actions of cop-killers does nothing but create fear and division. To be clear, BLM does not seek out, plan, or encourage violence against police officers; to suggest otherwise is dangerous, offensive, and patently false. We should not impute the Dallas police gunman Micah Johnson's crimes on BLM, much like black people do not condemn all white people for Dylann Roof's massacre of a black church congregation in South Carolina. The article's author correctly identifies that police officer killings are tragic and wrong, and yet he fails to extend that same sympathy to black American citizens wrongfully murdered by police officers. Rather than a desire for violence, the Black Lives Matter movement grew out of the black community's frustration over the American justice system's failure to hold officers and vigilantes accountable for the murders of black Americans. BLM seeks to address the systemic and structural bias against black Americans with a plan that includes community oversight, limitations on use of force, body cameras, and an end to for-profit police practices. Black Lives Matter does not mean that Black Lives Matter only, but rather, that Black Lives Matter—also. As the Chief Executive for AT&T Randall Stephenson recently articulated to his company employees, "When a parent says, 'I love my son,' you don't say, 'What about your daughter?' When we walk or run for breast cancer funding, we don't say, 'what about prostate cancer?' And when a person struggling with what's been broadcast on our airways says, 'black lives matter,' we should not say 'all lives matter' to justify ignoring the real need for change."

Alarming, the article argues that "BLM often encompasses the worst of all race baiters alongside their mostly decent and concerned ranks," painting those who desire equality and the exposure of injustice within law enforcement as "race baiters."

Continued on Page 2

Note from Joe Stewart, Editor-in-Chief: The October issue of Motions contained an article entitled Policing the Police, in which the author sought to analyze and offer opinions about the issue of police violence against black Americans. I have heard concerns from many readers among the law school community that the article was biased and certain opinions expressed were patently false. Members of the USD Black Law Students Association asked if they could submit a response, and I answered in the affirmative without hesitation. Motions is meant to be an inclusive forum of artistic, journalistic, and editorial expression created with the purpose of cultivating meaningful discourse. Unless expressly stated, no content reflects the opinions or beliefs of the editorial staff—Motions is merely the conduit of those students who feel compelled to speak through it.



MOTIONS

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Our mission is to provide news, information, analysis and commentary to students, faculty, and staff of the University of San Diego, the University of San Diego School of Law, and the general legal community of San Diego. We believe that journalistic excellence is the soundest foundation for success. We pledge to seek and report the truth with honesty, accuracy, and fairness. These principles are cautiously guarded by each member of the Motions staff.

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IMAGINARY WAR: A Response to Policing the Police

Continued from front page

Acknowledging disparate treatment does not make someone a race baiter, it shows an immense, admirable amount of courage to stand up for the rights of citizens unfairly targeted by the state. Police shot and killed Philando Castile in front of his girlfriend and her child because he lawfully exercised his Second Amendment rights. However, police tolerated a group of predominately white, open carry protestors displaying their AR-15 rifles inside of Chick-fil-A. The reasons for Philando Castile's death are not "complex, to say the least," a pattern of systemic racism within the police force is at the very root of that officer's decision to shoot Philando Castile.

If the police in South Carolina could apprehend Dylann Roof, a man who massacred nine members of an African-American church congregation, without using any force, why did the police in Ohio need to shoot twelve-year-old Tamir Rice for playing with a toy gun? Police even gave Roof a free meal at Burger King after his arrest!

Ferguson Effect:

The article continues its baseless assaults on the BLM movement by citing a controversial theory known as the "Ferguson Effect." The Ferguson Effect essentially states that violent crime increased after protests in Ferguson, Missouri, because "the heightened scrutiny of American law enforcement led [police] to hesitate more on the job."⁽⁶⁾ In other words, "inner cities" are in the midst of a crime wave because active resistance to alleged police misconduct deters law enforcement from doing its job. However, The Brennan Center for Justice repeatedly discredited this version of the Ferguson Effect because crime statistics suggest that local community conditions, rather than a national pandemic, likely created the spike in violent crime.⁽⁷⁾ As University of Missouri-St. Louis criminologist Richard Rosenfeld concluded, "longstanding grievances and discontent with policing in American communities, activated by police violence," can lead to "chronic discontent that erupts into violence."⁽⁸⁾ Documenting police brutality is not creating lawlessness and violence in some cities; rather an erosion of law enforcement's legitimacy leads to lawlessness, despair, and desperation. Even in Ferguson and St. Louis, Missouri, violent crime rates begun rising long before the killing of Michael Brown (and the subsequent "riots").⁽⁹⁾ Simply put, outside of a few isolated incidents, very little evidence supports a finding that protests somehow induce a chilling effect on law enforcement.

Even if we accept the Ferguson Effect as true (which most criminologists have not), the article's conclusion still makes little sense. The article seems to suggest that black Americans should sit on their hands despite this consistent, unending, relentlessly abusive behavior by police, lest our legitimate anger "fuel hateful rhetoric and violence against cops," which, in turn, creates angry, bitter, racist cops. Black people, therefore, should not protest because it might hurt the cop's feelings.

Presumably then, Martin Luther King, Jr. should have stopped the Civil Rights Movement because it caused racial distress and animosity throughout the nation; Cesar Chavez should not have organized farmworkers because it cut into profits and spurred hostility; and gay rights activists should have stopped pushing for marriage equality because the conservative right decided that marriage was between a man and a woman. Minority groups will not achieve equal rights without some sort of turmoil, and social change does come with costs, but we should not abandon our quest for equal recognition under the law simply because the path is difficult.

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ADVICE ON LOVE, LIFE, AND LAW

Question on Love:

How do I get out of being Friend-Zoned? -Sincerely, Coffee Dates 4-Eva

Honey, you turn around and friend-zone them. Ignore them. Be mean to them. Then you will become irresistible. They will not be able to think about anyone BUT you. The mystery of why you changed will drive them crazy enough to go after you. Darling, that is the beauty of reverse psychology. Always being there and being nice is too vanilla. You got to spice things up. Make them miss you when you are no longer following them around like a puppy. Just wait it out and watch for the WANTED posters to come popping up. Then, and only then, should you return to them, sweetheart.

-Sincerely, Petunia Pothead

Charles M. Schulz says "Nothing takes the taste out of peanut butter quite like unrequited love." You should seriously consider whether it is worth it to waste your time waiting around for them or if you should move on with your life. Maybe if you take a step back and look around there might be people waiting for you to notice them. Ask yourself whether you are friend-zoning anyone. Now that you know how it feels take a minute to see if you should un-friend-zone them. Any attempt to un-friend-zone yourself is futile. You can only be in charge of yourself and how you feel. You cannot control someone else.

-In Solidarity, Wise Owl

SAGE ADVICE CONTINUED

Studying abroad will certainly give you an appreciation of information costs, an appreciation acquired through frustrating and occasionally painful experience. But the frustration and pain will be more than offset by the warm welcome you will receive from many people, not to mention real gelato, apfelkuchen, trifle, or other culinary treats that you'll be obliged to eat.

Q: Can you speak to the work you did in D.C.?

A: I served as an appellate attorney in the antitrust division at the Department of Justice. Some of the matters that I was assigned generated landmark opinions, so I get to discuss them when I teach antitrust.

Q: What sparked your interest in antitrust law?

A: U.S. history courses painted a picture of trustbusters as heroes. Even a terrible antitrust course in law school and a stint at the Justice Department did not disabuse me of this romanticized image. What did was preparing my own antitrust course, but by then I was hooked on the intellectual puzzles presented by the subject matter.

Q: You have a reputation for your unique methodology of teaching criminal law. Speak a little to the methodology and the benefits.

A: Not unique, but on the decline. During most classes – in any of my courses – I ask one question after another. These questions function primarily as a model for how litigators think about the problems that they must tackle, in particular, how they frame issues with precision and generate arguments and counterarguments to address them. To me, thinking is largely a matter of asking the right questions and asking them in the right order. My goal is to help my students become better thinkers about matters touched by law.

Q: Are you going to play softball next spring? You are missed.

A: I plan to unless the Cardinals sign me.

If you are interested in knowing more about Securities, trailblazing, and why the Cardinals don't win world series anymore, Sign up for Securities Regulation in the spring. It is offered M/W 7:30-8:45 p.m.

PROP 62 DEATH PENALTY PROP 66

End or Mend?

Two propositions appear on the ballot this November to address the death penalty in California. Prop 62 seeks to repeal the death penalty and replace it with life in prison, applying retroactively to all death penalty sentences. Prop 66 seeks to modify death penalty procedure by limiting successive appeals, increasing the pool of attorneys available to take appeals, and exempting prison officials from certain regulations pertaining to execution methods.

There is much to consider in these propositions and compelling arguments for both sides. California has sentenced more than nine hundred criminals to death since the reinstatement of the death penalty in 1978, yet only thirteen have been executed. The last execution carried out in the state was more than ten years ago, just before a federal judge halted all executions and required California to revise its lethal injection procedure, which still has not happened. Some folks want to convert all death sentences to life imprisonment and save the state “\$150 million annually within a few years,” other folks want to clear out the backlog and enter into an “unknown fiscal impact” on the state (fiscal impacts on both propositions are stated in the official CA voter guide). While this was originally meant to be an article in support of Prop 62, Jackson Browne—2004 Rock and Roll Hall of Fame inductee and California native—was unfortunately unable to get back with me for an interview before production deadline, so we are going to swing this another way.

These propositions are what the Golden State calls “incompatible propositions.” What this means, quite obviously, is that they can't both be enacted into law. However, there are some technical factors that must be understood to see how this all works. Article Ten of the California Constitution provides that a ballot initiative requires a simple majority to pass—easy enough. But when you have incompatible propositions and both pass, the one that receives the highest number of “yes” votes between the two will be the proposition enacted into law. Seems fair, right? Well, not to me.

I look at it this way: one initiative seeks to prohibit a currently legal practice, the other seeks to modify the practice. If more Californians vote ‘yes’ than vote ‘no’ to prohibit the practice, shouldn't the question of modifying the practice be dismissed entirely? A sort of hierarchal ballot, if you will?

You may say absolutely not. Ballot initiatives are the clearest form of direct democracy, and if both have reached the ballot, both should have their fair shot. But to the naysayers I say that this sort of conflicting bureaucratic measure against a clear-cut prohibitive measure unfairly tilts the scale against the clear-cut measure.

Imagine that the voting population consists of one hundred voters. Sixty support the clear-cut measure, forty support the bureaucratic measure. Few if any of the voters are aware of the incompatible proposition rule (it is certainly not spelled out on the ballot). Forty out of forty will be adamantly opposed to the prohibitive measure because they want to mend, not end. But of the sixty in support of the clear-cut measure, some may also vote in support of the bureaucratic measure on the premise that, if their preferred measure does not pass, some reform is better than none at all.

And this is precisely what many argue the Prop 66 movement set out to capitalize on. Very few Californians would argue that the capital punishment system in California is a well-functioning machine. But most Californians do not see eye to eye on whether we should maintain eye for an eye. I contend that the bureaucratic underdog known as Prop 66 exploits these self-evident truths and the ignorance of the voting populace to encourage Prop 62 voters to also vote yes on Prop 66. This sort of practice is manipulative of voters' true intent.

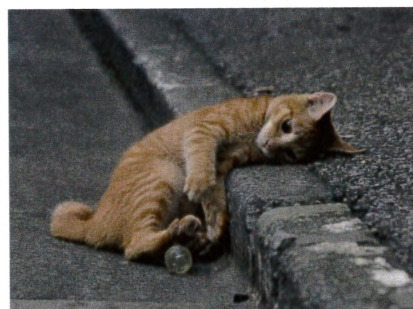
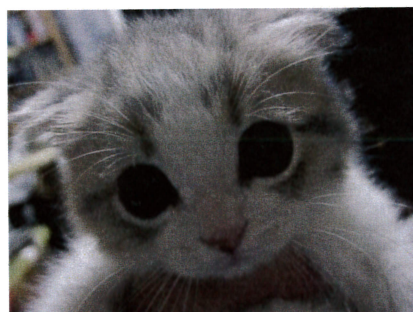
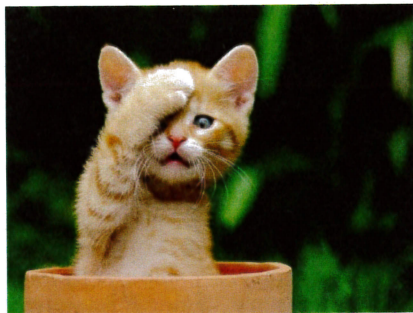
In this case, we have a straightforward situation of repeal versus modify, which makes an argument for a hierarchal ballot pretty easy. But not all incompatible propositions are so straightforward—just consider the two local measures offering different means of providing for a Chargers stadium. They want the same outcome, just by paving different paths. So what is the catch-all solution to incompatible propositions? I say the answer is as simple as an extra bubble on the ballot. We've got Yes, we've got No, let's add: Yes if the other is a no-go.

TIME TO VOTE!

Don't Forget, November 8 is Election Day

This issue has spared you, our valued reader, any further analysis of the presidential candidates. However, there are a number of propositions on the California ballot this year, and we've offered a bit of analysis, just in case you're not sure what's going on. You're welcome.

PICTURES OF ADORABLE KITTENS



WHY INTEGRITY MATTERS

By Alex Behzade

Politics is often a zero sum game. We as political operatives and partisans often put our blinders on, defending our friends for conduct we would excoriate our enemies for. This is fair. This is perfectly explained by the tribal nature of human beings. In most cases, this is harmless.

However, a disturbing trend has emerged in the decades after Republican leaders approached Richard Nixon in the White House to request that he resign or be impeached (regardless of the merits of the scandals that toppled Nixon, this showed their honor). It has infected not one but both political parties, parties that never hesitated to call the other out for such actions - take Nancy Pelosi denouncing adulterous Republican Congressmen in 2006 or giddy conservatives mocking and shaming Democrat Anthony Weiner for his indiscretions. Instead of either taking stands on principle to condemn the action of your supposed comrade in arms or at the very least defend them in spite of the attack, we see many on both sides seek to excuse the very dishonest and vile conduct they would pillory the opposition for.

Two prominent examples stand out in the past two decades. Democrats stood behind President Bill Clinton in the wake of the Gennifer Flowers, Paula Jones, and Monica Lewinski scandals. Prominent Democrat after prominent Democrat announced it was "just about sex" and that it was a nothingburger, while others turned their fire on Republicans. Feminist commentator Nina Burleigh famously said: "I would be happy to give him a blowjob just to thank him for keeping abortion legal. I think American women should be lining up with their Presidential kneepads on to show their gratitude for keeping the theocracy off our backs."

Meanwhile in the lead up to the 2016 Presidential election, dozens of Republican officials defended and excused boorish behavior by Donald Trump that rose in some cases to apparent sexual assault. Some dismissed it as "locker room talk," some questioned the veracity of the allegations, while Jerry Falwell Jr. went as far to say he'd still vote Trump if Trump was proven to commit a sexual assault because "We're voting for a President, not a pastor."

All of this deserves condemnation from both sides, but how can we truly condemn both the vile behavior and the excusing of such vile behavior if we do not understand what makes integrity such a vital aspect of our vetting of prospective candidates. And that is the question. Do Burleigh and Falwell Jr. have a point? Why is the integrity of those we vote for so important?

Those that defend or excuse such behavior do have an important point - two important points actually. First, that all human beings are fallible, both in a spiritual light ("he who is without sin can cast the first stone") and in a secular one. The fact that their private lives are not the best does not affect their infallibility of their leadership, they argue. Is it hypocritical to judge our officials as we would saints when all of us do engage in immoral and unethical conduct of some sort? This is the main argument among the defenders of Donald Trump.

Others condemn the actions but bring down fire and brimstone upon the tabloid culture. The right to privacy, they argue, affords the same right to keep one's private life private. That a person's private dalliances is not the press or public's business, only matters that pertain exclusively to the professional conduct of the officials themselves. Do we abuse the spirit of the first amendment by airing the "Dirty Linin" of our public officials? This was a common argument for team Clinton during the impeachment.

Continued on motionsonline.org

ADVICE ON LOVE, LIFE, AND LAW

Question on Life:

Life is a series of mistakes that we're meant to learn from. What are some valuable mistakes you've made?? - Sincerely, Anxious to Fail

Sweetheart, who is the depressing clown who told you life is a series of mistakes? Life is a game. You win some, you lose some. There's no right or wrong. Honey, it's all about the fun, the thrill, the adrenaline rush. So I would not call my experiences mistakes, but I did learn that you should not take life seriously. Nobody gets out alive anyways. Enjoy it while you can, darling.

The Dalai Lama said, "There is no need for temples, no need for complicated philosophies. My brain and my heart are my temple; my philosophy is kindness." Kindness goes a long way. A helping hand could one day return the favor. I have learned not to burn bridges. I have learned to pay it forward. I have also learned to give back. Life is a cycle. What you throw into it will come around again. So just be mindful of what you are putting out there and how you treat others because karma is a beach.

-Sincerely, Petunia Pothead

- In Solidarity, Wise Owl

LETTER FROM THE EDITOR

I hope everyone is enjoying the mad dash to finals and is looking forward to a slightly less stressful winter break. 2017 is coming quickly, folks, and with it a lot of changes. A new president, a lot of ecstatic (though maybe-a-little-too-cocky) Cubs fans, and a brand new layout to Motions. It looks like a newspaper, but functions like a magazine, mind-blowing, I know! Some say the print industry is dying, I disagree. But it is getting expensive, and the socially-minded motions staff isn't into wasting money. Or paper, for that matter. In this format we are able to make smaller orders that better reflect the needs of the law school. With this kind of social-minded progress, we are sure that Motions will soon join the ranks of noble Nobel laureates.

But enough about us. Best of luck to everyone in finals, safe travels over winter break, and we'll look forward to seeing you on the other side.

Also, to all the Cubs fans out there, just kidding about that whole cocky thing. Congratulations on your long-awaited and well-deserved win. I sure wish the last three generations of Cubs fans could have seen it in their lifetimes. I guess the Cubs winning a series is like witnessing Haley's Comet. Regardless of the team we support, we should all feel grateful for seeing it.

Yours in Service,

Joe Stewart,
Editor-in-Chief



Five Tips to Guaranteed Finals Success**!

****Disclaimer: "Success" is defined as surviving**

By Melissa Chin

1— Preparation, preparation, preparation.

Thanksgiving weekend is key. This is time for you to STUDY your outlines, NOT prepare them. Most of your classmates are grinding away, trying to finish last minute readings; however, you, Mr. / Ms. Prepared, will only add a few final touches. Turkey up, enjoy the food coma, study your outlines.

2— Sleep.

Speaking of comas, get some rest. In order to be able to perform, you need to be in tip top condition. It does not matter how smart you are or how much you have prepared, if your body is so dead that you cannot form coherent IRACs. Meditation, melatonin, massage— just get some rest.

3— Stay away from the zombies.

During finals, everyone loses his or her mind, and flocks to the library to inevitably stir the pot. Avoid these people like the plague. You need to be in a positive head space, where you can calmly study. Repeat after me: "You is smart. You is prepared. YOU can do this."

4— Strategy.

Give yourself enough time for each question. When you get the exam, look at the number of questions and the point value of each. Allocate your time accordingly. Sometimes professors are nice and allocate the time for you.

Edit your answers. Half the battle is writing a coherent answer that your professor can understand. Professors are reading millions of questions, they hate finals just as much as we do. Make it easy for them to understand your answer. Underline, bold, etc. etc., check spelling and grammar. Again, allocate time for yourself to do so.

Consider practice problems and exams. Past exams are available on the library website. These exams will help you to get a feel for your professor. CALI lessons are another great resource. Log in through the library website. Avoid using commercial outlines, as these can be outdated or contain information contrary to your professor's opinion. Again, at the end of the day, you are writing your answer for THAT specific professor.

5— Do you best, and then walk away.

The first rule of finals is, you don't talk about finals. Once the clock strikes and the exam is over. People leave the room and immediately want to discuss answers. What's the use? The test is over, it's not like you can run back in there and change your answer.

Just leave it alone. Treat yo' self, take a nap, and get back into your positive head space. Save the major celebration for the end, because believe me, you are going to need all the energy you can muster to celebrate completion of your first semester of law school!

PITCHES BE CRAZY STOP THE UNESTOPPABLES

By Colton Addy

With two weeks left in the Grad/Law Intramural Softball Season before the start of playoffs, a quick run down of where teams stand is in order. The Unestoppables, who have won three consecutive Grad/Law Intramural Softball championships, opened the season with a loss to Pitches Be Crazy (PBC). PBC kept right on rolling the very next week by defeating last year's two-time runner up, Chicks Dig the Law Ball, who opened the season with back to back losses. PBC currently sits as the last undefeated team in the league at 6-0 and have officially put the rest of the league on notice that they are the team to beat this year! The Unestoppables and Chicks Dig the Law Ball have since righted the ship, rattling off four and three straight wins respectively. I have it on good authority that both teams still believe they have what it takes to beat PBC come playoffs.

Aside from those three teams, who are the other contenders? The Sandlaw currently sits in second place with four wins, one loss, and a tie. The Sandlaw, however, has only played one game against a team with a winning record, which they lost by 10. They will be looking to show the other top teams that they are more than just an illustrious record and have what it takes to beat any team!

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IMAGINARY WAR: A Response to Policing the Police

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Police Bias:

In an effort to refute the concept of implicit bias in police shootings, the article cites a July 2016 study by Harvard researcher Roland Fryer.⁽¹⁰⁾ Although the study found no statistically significant biases in police shootings of black people, it failed to examine what happens before the shootings occur. The study focused only on police use of force, completely neglecting the fact that police target the black community for stops at a substantially higher rate than other ethnic groups. The article attributes this racial profiling to "BLM rhetoric," but how can it logically blame a movement that did not exist until 2014 for an issue as old as law enforcement itself? Moreover, the article fails to address the danger that people of color face from law enforcement and omits entirely the fact that police are five times more likely to kill unarmed black people than unarmed white people.⁽¹¹⁾ The article also seeks to justify the substantially higher rate of police stops of black people by citing crime statistics that show the occurrence of higher rates of violence in black neighborhoods. As the argument goes, more crime means a greater police presence, a greater police presence means a higher likelihood of police stops, which can eventually lead to officer-involved shootings. However, this argument falls apart when applied to police policies such as stop and frisk and pretext stops. If violent crime ultimately drives "Terry stops" (stop and frisk), which accounted for millions of stops over the past fifteen years⁽¹²⁾, how does one explain the high percentage of completely innocent people accosted by officers, relative to guilty ones?⁽¹³⁾ Furthermore, if police concentrate on violent crime in black communities, why do police stop black people in white neighborhoods more frequently than whites?⁽¹⁴⁾ Violent crime cannot justify police misconduct, and we should call these unconstitutional applications of police action what they are: racist.

Solutions:

Although the final section of the article focuses on "solutions," the author makes no mention of the structural change needed within police departments. Instead, he seems to suggest black Americans be patient while police departments voluntarily adopt the reforms seen in Dallas. Frankly, it is absolutely abhorrent to tell grieving mothers, fathers, brothers, sisters, friends, and communities to sit on their hands while the very people who kill them make a few tweaks to solve the problem from within.

All of the author's efforts to appear fair and balanced fall flat, with comments that one can only describe as disingenuous. For example, it states, "Just because there is a perception of excessive actions from law enforcement is reason enough for reform." There is not just a perception of excessive actions, we have witnessed this behavior both in person and on our screens. We watched the life slowly drain from Eric Garner's body as police choked him for selling cigarettes, saw an officer shoot Philando Castile because he legally carried a firearm, and we saw video of the patrol that gunned down twelve-year-old Tamir Rice. Black people do not merely perceive that society unfairly regards them as dangerous and threatening; it is a fact borne out of America's history of policing and society at large.

If the author of this article truly wants to contemplate solutions, he should start with an introspective analysis of his own motives. For black people all over this country, this topic is more than just a political talking point; this is their life. Describing BLM as a "movement designed to score electoral points" diminishes the struggle against police violence, which, for black people across America, is a matter of life and death.

All References and Sources will be made available at motionsonline.org**ADVICE ON LOVE,
LIFE, AND LAW****Question on Law:**

How do I get over the nerves of doing a closing argument, job interview, or client meeting?

- Sincerely, Ants in my Pants

Darling, you are in the wrong profession if you cannot handle public speaking. Being a lawyer is nothing, but talk, talk, talk. You talk your way into a business deal. You talk your way from black to white. And eventually you might just talk your way into a divorce. But, honey, the bottom line is whatever you do fake it till you make it. Nobody knows if you are about to wet yourself or that your heart is beating faster than rounds fired from a machine gun. That's all inside. So all you got to do is not let it show on the outside. Sweetie, this ain't hard, it's all about putting up a front or at the very least put on some adult diapers before you do anything.

- Sincerely, Petunia Pothead

Blake Lively said, "The most beautiful thing you can wear is confidence." Practice. Practice. Practice. And practice a hundred times more. Rehearse in front of a friend or dog. Research the background of your employer or the person who will be interviewing you. Treat your client like a friend instead of a stranger. The more you prepare yourself the more confident you will be in any and all situations. If you know what is happening and what to expect, your nervousness minimizes and your chance of success maximizes. Once you acknowledge what your nervous habits are you can slowly learn to avoid them or at least embrace them and not let them control you. By removing or acknowledging the anxiety and anticipating any possible curveballs coming your way you will have your head in the game and your poker face on.

- In Solidarity, Wise Owl

The Chargers' Measure C is Wrong for San Diego

By Andre Castillo

I love the Chargers. I've rooted for them since I was young. Junior Seau and LaDainian Tomlinson were two of my favorite players. I still love Philip Rivers. And I think the Chargers will make the playoffs this year. (Bank it.) But I'm voting no on the Chargers-backed Measure C, the Football Stadium measure, because it's wrong. And you should vote no on Measure C too.*

While I understand the desire for Measure C—I love the Chargers—it is the worst form of economics. There are two forms of economic behavior, a good kind and a bad kind. The good kind is what gives us our awesome smart phones with fun new emojis every year. This is "value creating" behavior, where companies compete for your dollars on value. You pay them for something you get. They are closely, inextricably tied to one another.

As anyone who has watched the Chargers as long as I have, you know this is not them.

Measure C is the other kind of economics, the bad kind. It is known by economists as "rent seeking" behavior—seeking money for their status and power, but not their value. You pay them because you have to, not because you get reasonable value in return.

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SOFTBALL

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Old N' Slow, a perennial contender who continues to baffle 1Ls by not being old or slow, currently sits in fourth place. After losing in the semi-finals by two runs last Spring and narrowly missing out on a championship game, Old N' Slow is playing with a chip on its shoulder and looking to prove that faculty are just as competitive as law students. 2Lit and Soles round out the remaining teams with a winning record. 2Lit could make a deep playoff run. They only lost to PBC by one run, and their only other loss came via forfeit when the entire team decided to watch their beloved Dodgers get closed out by the Cubs rather than play in their own softball game. Ouch! Someone should let this team know that they live in Padres country. Soles has racked up their three wins against the three last place teams, but they say a win is a win.

Balls Deep for Harambe and Softballz Out for Harambe have more than just a Harambe in common, they both have a 2-3 record! It's good to see that these two teams are more than just athletes, they care about the issues too! Poor Harambe. Softballz Out for Harambe defeated Balls Deep for Harambe in what some are calling the Battle of the Harambes. Balls Deep for Harambe, however, has shown the most promise of the 1L teams and has kept it close against some of the better teams in the league. Both teams have the potential to shock the top teams come playoff time.

LIFO the Party earned their first win last week after suffering four losses. Is this a sign of more things to come? Also, this writer would like to point out that their team name is Last In First Out of the Party, would someone get this team some drinks (after the game of course)? Premature Adjudication, BPDA Sculpins, and 12 Angry Batters are still looking for that first win, but at least each has a tie. Will one of them be able to get a win before the season is over? Of the three teams, Premature Adjudication looks ready. In the last two weeks, they tied The Sandlaw, the second place team, and only lost to PBC, the first place team, by three. The schedule is not doing them any favors though, as they face off against 2Lit and Chicks Dig the Law Ball in the last two weeks. If not, there is always next year.

CALL FOR SUBMISSIONS!

*You want to write,
you know you do.
Come on, give it a shot.
Gotta pay for coffee somehow.
Write what you enjoy,
tell us new things,
keep us coming back for more.
Send submission inquiries to
motions@sandiego.edu*

Who's High About Voting?

By Michelle Dinh-Tran

"Everybody gets high sometimes, you know, what else can we do when we're feeling low?" These Major Lazer lyrics could not be more true and appropriate for this topic. Lawyers are notorious for alcohol and drug abuse problems, but now there is a chance to use recreational marijuana legally. There no longer has to be any shame, guilt, or secrecy to coping with our problems. As long as the individual is over 21 and uses marijuana only at home or at businesses licensed for on-site marijuana use and sales. But keep in mind only 28.5 grams of marijuana and 8 grams of concentrated marijuana are permitted.¹ Smoking it in a car, public places, and places with children are all prohibited. People are also allowed to grow up to six of these adorable and useful plants in their homes as houseplants, although it has to be in locked areas and not visible to people outside. But that is okay because marijuana plants can thrive in artificial light for 16 hours a day and need eight hours of darkness for flowering and vegetative growth. It does not require much watering and is low maintenance. Marijuana got its street name "weed" because of the fact that it grows easily and anywhere. Now all this could become a reality with one simple vote in this election ballot.

California Proposition 64 California Marijuana Legalization

Voting YES supports legalizing recreational marijuana for persons aged 21 years or older under state law and establishing certain sales and cultivation taxes.

Voting NO opposes the proposal to legalize marijuana recreational marijuana under state law and to establish certain sales and cultivation taxes.

Pros and Cons

Supporters for the bill are about 59% since August 2016 and include California Democratic Party and the LA Times. ¹ Some positives to passing Prop 64 include ending the drugwar, making marijuana a regulated and controlled product for adults will make it a lot safer, this is a rational drug policy, save millions on criminal justice costs, and marijuana is comparable to alcohol so it makes no logical sense to criminalize one and not the other.¹ Aside from providing an alternative outlet for stress relief and all the pros mentioned earlier, individuals who have been sentenced for activities that are now legal under the bill will be allowed a chance for resentencing.¹ All this sounds pretty dope, but the other side does make some compelling arguments.

The California Republican Party and California Secretary of State, Julie Schauer, opposes the bill. Oppositions to Prop 64 voice concerns about the lack of long-term health effects of using marijuana, the deficiencies of the bill because it seems to be rushing things and California is not ready, it appears commercially driven rather than socially, issues of enforceability, and too many question are left unanswered by the poorly written bill.

Of course, there is one more downside, like they say, "nothing is certain but death and taxes." So legalizing marijuana also means there will be two taxes imposed. If you are growing the plant for cultivation there is a tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves, as well as, a 15% tax on the retail price.¹ So where is this money going? To the pockets of government fat cats? Have they become the new drug overlords above the cartel? Not exactly, as this is expected to bring in \$1 billion a year, it will be distributed to the following programs and purposes: UCSD Center for Medical Cannabis Research; public California universities' Department of Highway Patrol; grants to local health departments and community nonprofits for job placement, mental health treatment, and drug education programs; programs to alleviate environmental damage from illegal marijuana producers; and programs that reduce driving under the influence of marijuana.

So are the cops going to beat down our doors if we grow more than six plants or are they going to do a patdown or strip search on us in the street to weigh how many grams of marijuana we have in our pockets? No, but the Bureau of Marijuana Control would be in charge of regulating and licensing marijuana businesses.¹ Besides that, there is really no hard oversight on how much we grow or how much we use. In other words, to be blunt, have at it! But please at least be mindful and use your best discretion for your own safety and that of others should this bill pass, which is more likely than not. It is up to you to decide if this all rolls out or gets stomped like a roach.

CHARGERS' MEASURE C

Continued from Page 6

The Chargers of course deny this and say that Measure C will in fact bring value to the city of San Diego. But every economic study done on the subject has shown this to be nonsense.

This is rent seeking behavior, which is what monopolists do. Whereas your average business has to compete ferociously for your dollar and closely tie every dollar you give them to value they return to you, monopolists, like the Chargers, don't. Monopolists can charge taxpayers almost any fee they think you can afford, no matter how little value you get in return. This is why in most areas your cable and home internet service remains cruddy, while your smart phones progress every year by leaps and bounds.

Voting yes on Measure C is rewarding the Chargers' rent seeking at the detriment of our city and our kids. It's a boondoggle—under Measure C, \$1.15 billion will go to the Chargers out of our city treasury. And right into the pocket of billionaire Chargers owner Alex Spanos.

Spanos's cleverest diversion is his allegation that the \$1.15 billion is only coming out of a hotel tax on foreigners, not from San Diego, and that this doesn't actually hurt San Diegans. But do you know what the hotel owners—who actually bring revenue into San Diego—say about that allegation? It's not true. They're against Measure C. They have likened one of Measure C's features—an elimination of a fund that promotes hotel tourism, thus bringing revenue into San Diego, so that money instead can be diverted to Alex Spanos's stadium—to a similar action by former Mayor Bob Filner. That comparable act by Filner had a catastrophic effect on hotel revenue in San Diego's Tourism Marketing District—the temporary loss of that marketing fund caused San Diego hotel room growth in the area to drop 50% and the city lost \$560 million in visitor spending revenue as a result, according to Hotel Motel Association chairman Joe Eustice. That isn't money lost to foreigners. That is money lost to San Diego.

This allegation also ignores the fact that visitors will have less money to spend because Measure C will force them to pay an egregiously high 16.5% hotel tax—what do you do when you pay out of the nose for a hotel room while traveling? You shrink the rest of your budget. One plausible worst-case scenario from the aforementioned hotel association puts the stadium's operating expenses at potentially \$67 million every year, while creating potentially just \$2.3 million in new tax revenue. Who would cover the annual loss?

We know where Measure C's money will go—to billionaire Chargers owner Alex Spanos. He could afford to pay for his own stadium if he wanted to, but he doesn't. Because he's a monopolist, a rent-seeker. He wants to own only the real assets, as Measure C prescribes, by "leasing" his stadium that only he can profitably use from San Diego, while we stuck with the real liabilities—the \$1.15 billion, plus operating costs.

So where will it come from? The weight of the evidence shows a clear net loss. So who pays that loss?

Mostly, it's not going to be us. It's going to be our kids.

That \$1.15 billion given to the Chargers under Measure C is a loan, based on rosy projections of stadium revenue. And when the projections turn out to be false, as they always do, that bill is going to come due.

And when it does, it's going to come from our kids' education.

It always does.

*You should vote no on Measure D, too, the "back-up" Football Stadium measure. Not even the Chargers support that one.

Law Librarians – We're Everywhere! Q & A with a Law Firm Librarian

By Melissa Abernathy, Law Librarian

Last month Anna Russell reminded us what a law librarian can do for you here at USD (What (the heck) is a law librarian? Motions, October 2016). This month we wanted to highlight what firm librarians can do for you while you are at your summer associate positions or as new associate hires.

From an informal poll of law librarians at nine San Diego law firms, we are happy to report that all firms provide some sort of legal research training. Some firms train in large mandatory classes, others keep training optional or on an individual basis. Often legal research vendors like Westlaw and Lexis participate.

We chatted with Betsy Chessler, a Research Analyst at Morrison & Foerster LLP with over 17 years of law librarianship experience.

The full interview will be published on motionsonline.org and run in its entirety in the first issue of 2017.

Justice Against Sponsors of Terrorism Act

By Kate Kearney

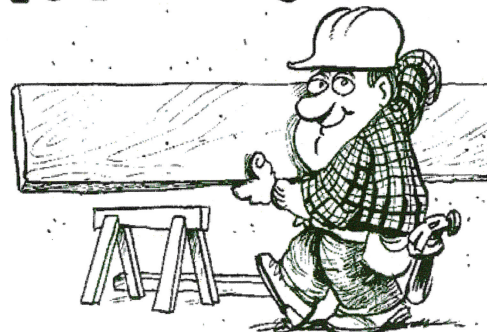
Well folks, hell may have officially frozen over because I agree with President Obama on something.

Should the families of 9/11 victims be able to sue Saudi Arabia for its alleged involvement in the terrorist attacks? Well, for better or for worse, they can now. Congress recently passed the Justice Against Sponsors of Terrorism Act (JASTA). President Obama actually vetoed JASTA but Congress, for the first time during his presidency, was able to override his veto effectively making JASTA law. JASTA reads in part:

"This bill amends the federal judicial code to narrow the scope of foreign sovereign immunity (i.e., a foreign state's immunity from the jurisdiction of U.S. courts). Specifically, it authorizes federal court jurisdiction over a civil claim against a foreign state for physical injury to a person or property or death that occurs inside the United States as a result of: (1) an act of international terrorism, and (2) a tort committed anywhere by an official, agent, or employee of a foreign state acting within the scope of employment. International terrorism does not include an act of war. Federal court jurisdiction does not extend to a tort claim based on an omission or an act that is merely negligent." Public Law No: 114-222

The full interview will be published on motionsonline.org and run in its entirety in the first issue of 2017.

Pardon our dust



We are looking forward to the great changes to come with our new layout and format! Looking forward to seeing you all back in 2017!

- The Motions Staff